(Testimony of Dr. Robert B. Mericle.)

A. That we have a certain required number of samples to be looked at for various size lots.

Q. Yes: Isn't that correct?

A. Yes, we do have.

Q. And you have had them for years?

A. Yes.

Q. And you have them in your office now, haven't you? A. Yes.

Q. Will you bring those tomorrow morning?

A. If that is what you want, yes.

Mr. Hippeli: Pardon me, Mr. Faulkner. I may be able to assist you. Do you want to ask him if that is what you are talking about (handing a document to Mr. Faulkner)?

Mr. Faulkner: That is February, 1944. That is a little late.

Mr. Hippeli: Let the witness bring them from whatever date you want.

Mr. Faulkner: Yes. Will you do that, Doctor?

The Court: He wants to know what he is to bring. Show him those.

Mr. Hippeli: I think he is asking for the mechanics of shell grading.

Mr. Faulkner: I think I had better tell him what I want, myself, your Honor.

I would like you to bring the Department of Agriculture Regulations which define and are binding upon your inspectors in the matter of how they shall grade eggs for shipment to War Agencies during the period—would you say——

Mr. Hippeli: He hasn't any such regulations.

(Testimony of Dr. Robert B. Mericle.)

Mr. Faulkner: He just said he did.

Mr. Hippeli: Ask him.

Mr. Faulkner: Q. Is there any question that you have such regulations?

A. With reference to the number of cases that we should examine for various sized lots——

Q. That is right, and how many cases you pick, how you pick them, and the manner in which you are to candle them, and the number of eggs out of each box that you are supposed to take. That is all covered by a regulation, isn't it? A. Yes.

Q. Would you bring that regulation that would be in existence? In fairness, say for the years 1942, 1943 and 1944?

Mr. Hippeli: You are asking for them. Get what you want.

Mr. Faulkner: All right. From 1938 on. [144]

Mr. Hippelli: I think he is referring to the mechanics of shell grading.

The Witness: Mechanics.

Mr. Faulkner: Q. Doctor Mericle, there was a booth in the firm of Nye & Nissen for the candling of eggs, isn't that correct, a special booth as distinguished from the candling room?

A. Right.

Q. Have you ever been in that booth?

A. Yes.

Q. How large a booth is it?

A. It is not more than probably four feet wide —four or five feet wide—and approximately four to five feet deep. I wouldn't say exactly.

(Testimony of Dr. Robert B. Mericle.)

Q. Have you ever been in it with any other person? A. Yes.

Q. Who? A. Mr. Moncharsh.

Q. Will you describe the circumstances under which you went into that booth with Mr. Moncharsh? Tell me when that occurred and what he was doing there.

A. We were checking egg equality in September, 1944.

Q. In September? Is that the only time that you were in that booth with Mr. Moncharsh?

A. The time that I remember specifically.

Q. Were you two the only people in there?

A. Our graders were there, our graders from the San Francisco office.

Q. How many?

A. To my knowledge there were two.

Q. Is that booth large enough for four people to get into it? A. Yes.

Q. And there were four people in it on that occasion, is [145] that right? A. Yes.

Q. Who were the other two graders?

A. Mr. Moosman and Mr. Reed.

Q. Will you tell me the circumstances under which you were in that booth with Mr. Menges, if you ever were?

A. To my knowledge I was not.

Q. Were you ever in that booth with Mr. Menges, if you ever were?

A. To my knowledge I was not.

Q. Were you ever in that booth with Mr. Berman? A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. Give me the circumstances under which you were in the booth with Mr. Berman, please, the time and the persons present.

A. I think it was on the same occasion.

Q. The same occasion? A. That is right.

Q. Were you ever in that booth with Mr. Goddard? A. Yes.

Q. When was that? A. The same time.

Q. You, Mr. Moncharsh, Mr. Goddard, Mr. Menges and the two graders did not get in that 4 by 4 booth, did they?

A. I did not say all at the same time.

Q. But on the same occasion, is that right?

A. Yes.

Q. That booth that you described has a partition in it, hasn't it, so that there are two places to candle eggs in the same booth, isn't that right?

A. No.

Q. It is not right. You have described an exhibit here, that this Exhibit No. 26 is supposed to represent something. What does it represent? What does that represent? [146]

A. That is a facsimile of the stamp that the U. S. Department of Agriculture graders use to identify products graded by them.

Q. During what period did they use the stamp of which that is a facsimile?

A. Approximately from 1942 on—all 1942 to——

Q. Is that the only stamp that they used?

A. No.

(Testimony of Dr. Robert B. Mericle.)

Q. How many other stamps did they use during the same period in relation to inspecting and grading eggs? A. I do not know.

Q. Four or five more besides these?

A. No.

Q. Two or three more?

A. In that neighborhood, yes. Some agencies have their own specific stamp which they request to be used on their products inspected for them.

Q. When you refer to some agencies, do you mean some Governmental agencies?

A. That is right.

Q. Such as which?

A. The War Shipping Administration, the Veterans Administration.

Q. This stamp would have no relation to shipments destined for those two agencies, is that right?

A. Some of the War Shipping Agencies stamped —they did not have their specific stamp until recently.

Q. Did you have a stamp for U. S. Procurement I's? A. No.

Q. Did you have a stamp for U. S. Procurement II's?

A. Pardon me on that question? How did you word it?

Q. Did the Department of Agriculture during the period that you mentioned have a stamp showing the grading of U. S. Procurement I's?

A. No. [147]

(Testimony of Dr. Robert B. Mericle.)

Q. Did it have a stamp showing the grade of U. S. Procurement II's? A. No.

Q. Did it have a stamp showing the grading of U. S. Procurement III's? A. No.

Q. Did it have a stamp showing the U. S. Grade C? A. Yes.

Q. U. S. Grade B? A. Yes.

Q. Did it have a stamp showing "Graded for quality"? A. Yes.

Q. Was the stamp B and C "Graded for quality" used at the same time as the stamp similar to Exhibit 26 was being used?

A. If the occasion arose it was.

Q. That is what I mean, if the quality required it. A. Yes.

Q. During that period of time did I understand you to say that the stamp was always placed on the end of the case? A. Yes.

Q. It is a fact, isn't it, the stamp was placed any place the person who had hold of the stamp could put it on, the end, the side, the top, or the bottom, isn't that right?

A. Not to my knowledge.

Q. Have you ever seen a case of eggs in which the stamp of the Department of Agriculture appears any place other than the front of the case?

A. If it does, it always appears on the end in addition.

Q. I mean it might appear in many places on the case, isn't that right?

(Testimony of Dr. Robert B. Mericle.)

A. But there is always one on the end.

Q. There is always one on the end.

The Court: We will now take an adjournment.

Mr. Faulkner: Your Honor, Mr. Eichler is here. Would you like to have him identify those records?

The Court: I am about to excuse the jury, gentlemen. What have you to say?

Mr. Pratt: I spoke to your Honor at the outset of the session this afternoon with regard to an employee, I think the office manager, of Nye & Nissen, who is producing certain records pursuant to a subpena and he is here now.

Mr. Faulkner: I will be glad to have him back in the morning.

The Court: Can't we take that up in the absence of the jury?

Mr. Pratt: No, your Honor. We want to put him on the witness stand.

The Court: Very well, step down, sir. Put him on the stand.

Mr. Faulkner: The witness will return, your Honor, with the exhibits.

The Court: I thought you wanted him here now.

Mr. Faulkner: I mean the Doctor. The Doctor is not excused.

The Court: Oh, no, the doctor is to return tomorrow morning at ten o'clock.

Mr. Pratt: This matter can be deferred until morning.

(Testimony of Dr. Robert B. Mericle.)

The Court: I understood you wanted him heard today. [149]

Mr. Faulkner: We would like him—it will take such a short time, I think.

JOSEPH L. EICHLER,

called as a witness on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Joseph L. Eichler.

Direct Examination

Mr. Pratt: Q. Mr. Eichler, your home is in San Francisco and I believe you are an employee of Nye & Nissen?

A. My home is in San Mateo. I am an employee of Nye & Nissen.

Q. You came here in response to a subpena served upon the corporation to produce certain documents from the records of that corporation, did you not? A. Yes, sir.

Q. Have you produced those records?

A. Not all of them, no.

Q. The ones that you have in your hand you have produced from the records of that corporation, is that true?

A. From our files, yes, sir.

Q. The subpena that was served upon you, which I think is this original—have you indicated on the paper you have in your hand which of the documents you have produced? A. Yes, sir.

(Testimony of Joseph L. Eichler.)

Q. Which one have you produced? Just give to the record which ones you have produced.

The Court: Read it for the purpose of the shorthand reporter taking it down. [150]

The Witness: Shall I read them off here?

Mr. Pratt: Q. Yes.

A. American President Lines, Order No. L-8559 dated May 5, 1944.

Mr. Pratt: May this be marked for identification?

The Court: Let it be admitted and marked.

(The document was marked U. S. Exhibit 27 For Identification.)

The Witness: American President Lines Order No. L-8884 dated May 1, 1944.

Mr. Pratt: May that be marked for identification?

(The document was marked U. S. Exhibit 28 For Identification.)

The Witness: American President Lines Order No. L-8884 dated May 1, 1944.

Mr. Pratt: May that be marked for identification?

(The document was marked U. S. Exhibit 29 For Identification.)

The Witness: Moore-McCormack Lines, Inc., order No. P-11813 dated May 9, 1944.

Mr. Pratt: May it be marked for identification?

(The document was marked U. S. Exhibit 30 For Identification.)

(Testimony of Joseph L. Eichler.)

The Witness: Matson Navigation Company, purchase order No. 89,042, dated December 2, 1944.

Mr. Pratt: May that be marked for identification? [151]

(The document was marked U. S. Exhibit 31 For Identification.)

Mr. Pratt: Q. You have produced five of these documents out of the——

A. Out of the 25.

Q. Out of the 25 that were called for by the subpena. A. That is correct.

Q. Now, these are original purchase orders issued to Nye & Nissen on the dates you have indicated, are they not? A. Yes, sir.

Q. Why have you not produced the other purchase orders that are called for by the subpena?

A. The purchase orders that were received from steamship companies other than the American President Lines, the Matson Steamship Company and the Moore-McCormack Lines were never filed by us for the reason that we did not feel that it would be necessary to keep those orders, and we did not want to go to the trouble of filing, inasmuch as we did not have sufficient help and sufficient filing space.

Q. You have then searched your records to find the others of these specified purchase orders, have you? A. Thoroughly, yes, sir.

Q. And you find none of them?

A. None of them.

Q. Now, the purchase orders that are indicated

(Testimony of Joseph L. Eichler.)

on this list were in the possession of your company about the dates mentioned, is that true?

A. Yes.

Q. And pursuant to those several purchase orders you supplied [132] the products that were described in the purchase orders, is that right?

A. I presume that is correct. I have not looked up all of those to see whether or not we did fill those orders.

Q. How does it happen that you preserved only the Matson and the President Lines purchase orders?

A. Well, they were handled by a different department of our organization, and we had been dealing with those companies for many years prior to the war, and we did not even keep all of those purchase orders. We only kept ones which we considered were fair size.

Mr. Pratt: If the Court please, I have no further questions to ask at this time, but I should like leave to recall this witness if it is deemed necessary by Government counsel.

Mr. Faulkner: I would like to ask Mr. Eichler just a question to clear up these records, your Honor.

Cross-Examination

Mr. Faulkner: Q. Mr. Eichler, the purchase orders which you have identified, which are but part of those requested by the Government, emanate from some shipping company, isn't that correct?

A. That is correct.

(Testimony of Joseph L. Eichler.)

Q. And the record preserved by Nye & Nissen with respect to these orders are the original delivery slips showing the delivery of merchandise, isn't that true? A. That is correct.

Q. In one department of Nye & Nissen, the minute the order is filled the purchase order is thrown in the waste basket, isn't that correct, ordinarily? A. Yes, sir. 153]

Q. And if there is ever any requirement to look at the purchase order, they are available from the steamship companies, isn't that true?

A. Yes, sir.

Q. As a matter of fact, in connection with these that you have produced as files of Nye & Nissen, you have secured counterparts of various purchase orders in anticipation of this trial within the last few days? A. I have, yes.

Q. Mr. Pratt asked you if orders were filled pursuant to purchase orders. Was a purchase order a prerequisite to the filling of orders for commodities during the years 1943 and 1944?

A. Not necessarily. Sometimes the companies would phone in the orders, and in most cases they would give us the purchase order number and we would sometimes fill the order before ever receiving the purchase order, the actual written document.

Mr. Pratt: Q. You always received a purchase order sometime, Mr. Eichler?

Mr. Faulkner: Q. After a full order has been paid for, is that correct?

Mr. Pratt: Let me ask my question.

(Testimony of Joseph L. Eichler.)

Mr. Faulkner: But he is my witness, Mr. Pratt.

Mr. Pratt: Very well. I do not want to quarrel with you, Mr. Faulkner.

Mr. Faulkner: I want to clear it up, and if I do not clear it up, then you may examine him further. [154]

Q. Mr. Eichler, during the period of time when rush orders were being filled out for these various boats, is it not a fact that purchase orders would be received by Nye & Nissen after a purchase order had been phoned in and the articles already delivered and sometimes paid for? A. Yes.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. But there was always a purchase order received, even though it might be received after the order was filled, isn't that true?

A. I believe so, yes.

Q. And then after you had furnished the commodity, the product, whatever is called for, thereupon your company issued an invoice which was sent by which payment was demanded from the company which issued the purchase order, is that right? A. That is correct.

Q. And these invoices——

A. I might add there that the invoice was already made out immediately after delivery of the merchandise.

Q. And the invoice was sent at once?

A. Yes.

Q. And the invoices being directed in every in-

(Testimony of Joseph L. Eichler.)

stance to the United States of America, War Shipping Administration, is that right?

A. I do not know if that was true in every instance.

Q. At all events, the purchase orders, the original purchase order in each instance was sent to you and a duplicate original [155] was retained by the company issuing the purchase order, is that right? A. I believe that was——

Q. And you have secured copies from these various shipping companies, from their records, made up as carbon copies of the original purchase order, is that true? A. Yes.

Q. And you also retain in your files carbon copies of the invoices you sent out in connection with these shipments, do you not?

A. No, we do not retain carbon copies of the invoices that were sent out. The procedure is that we make our an invoice on our own form—what we term an invoice—and the girl makes a typewritten invoice from that form. We do not keep a copy of the typewritten invoice.

Q. The invoice that is sent to the customer, to the shipping company, is sent immediately after the goods are delivered, is right?

A. That is correct.

Q. And in many copies? A. That is right.

Q. How many copies, do you know?

A. Oh, depends on the company. They run anywhere from six—and we have had some instances where they wanted 22 copies.

(Testimony of Joseph L. Eichler.)

Q. 22 copies, and they are all duplicate originals, are they not? A. Yes.

Mr. Pratt: There is nothing further now, but, as I said, if the Court please, we would like the court's leave to recall the witness.

The Court: The witness will be available. [156]

Mr. Faulkner: Any time, your Honor.

The Court: Step down. The jurors may retire and return at ten o'clock tomorrow morning.

(Thereupon an adjournment was taken until tomorrow, Thursday, January 17, 1946, at ten o'clock a.m.) [156A]

Thursday, January 17, 1946, 10:00 o'clock a.m.

The Clerk: United States of America v. Nye & Nissen.

The Court: Call the roll.

(The roll of the jury was called, all jurors being present.)

Mr. Hippeli: Doctor, will you resume the stand?

DR. ROBERT B. MERICLE,

recalled, having been previously sworn, testified as follows:

Cross-Examination (resumed)

Mr. Faulkner: Q. Doctor, you were to bring some records here. Have you got them?

A. Yes.

Q. May I see them, please?

(Testimony of Dr. Robert B. Merice.)

A. These that are clipped together at the last, the clip is out of them.

Q. Now, Doctor, you have, in response to a request made yesterday, produced in court a document that has a greenish color. I would ask it be marked Defendants' next in order for identification.

(The document was marked Defendants' Exhibit C For Identification.)

Mr. Faulkner: That document is dated February 8, 1944. You also have brought a document white in color, dated January 1, 1945. I ask the white document dated January, 1945, be marked an exhibit for identification next in order for the [157] defendants.

The Court: Very well.

(The document was marked Defendants' Exhibit D For Identification.)

Mr. Faulkner: Q. Now, in respect to the document that now bears that mark, Defendants' Exhibit C For Identification, dated February 8, 1944, I observe that that is a document put out by the War Food Administration. A. It is.

Q. Did they prescribe standards and rules and regulations for the Department of Agriculture during certain periods of time, Doctor?

A. They do.

Q. Did the Department of Agriculture ever prescribe rules and regulations for the methods of grading and inspecting eggs prior to February 8, 1944? A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. Where are they?

A. I do not have a copy.

Q. Did you ever have a copy?

A. To my knowledge there are some, yes.

Q. Pardon me? A. Yes.

Q. You testified yesterday concerning the procedure relating to the grading of eggs and the inspecting of eggs: That procedure was supposed to follow rules and regulations prescribed by the Department of Agriculture, was it not? A. Yes.

Q. It was not your whim or caprice as the supervisor to determine how a man was to inspect eggs, was it? A. No.

Q. As the head of the department, the only rules and regulations that you have been able to bring into court relating [158] to the manner in which the eggs were inspected from 1938 to the present time is a regulation the earliest of which is dated February 8, 1944, and the latest of which is dated January 1, 1945, is that correct?

A. Yes, that is all I have.

Q. Now, in connection with the grading and inspection of eggs at the plant of Nye & Nissen on the occasion where you were supervising the grading and inspection of eggs, will you restate exactly what was done in any case that would illustrate all of the cases where you were out there grading and inspecting eggs, so that we don't have to go over each instance?

A. The procedure would be that we would enter the plant.

(Testimony of Dr. Robert B. Mericle.)

Q. From the time you entered the plant until the time you left it.

A. When we would enter the plant we would be met by either Mr. Goddard or Mr. Berman. They would identify the eggs which they wished graded. They would have the various lots—there would be a lot of maybe 200, or 300, or 500 cases, whatever the lot consisted of. They would tell us the grade of the eggs, whether they were large Grade AA or Medium Grade AA, or large Grade A. They would have been segregated according to the grade which they had packed and candled the eggs for.

Q. May I interrupt—which you received from some midwestern shipper? A. Yes.

Q. Because they handled both types of eggs, didn't they? A. Yes. [159]

Q. Eggs in their own plant and eggs that came from the Midwest?

A. Yes, their own plant in the Midwest.

Q. From the Midwest, is that correct?

A. From the Midwest.

Q. You personally know they were handling a large number of eggs that came from the Midwest?

A. From their Midwest plant, I know they handled some.

Q. Midwest farmers where they bought from and got deliveries?

A. I am not familiar with that, no.

Q. Doctor, you are familiar with a situation which was brought to your attention where the Department of Agriculture had graded eggs very

(Testimony of Dr. Robert B. Mericle.)

high in the Midwest, and when they came out here the Department of Agriculture graded them very low and it was taken up with you and you made them take the eggs, isn't that right? You remember that instance, 3000 cases of eggs that were graded very high by the Department of Agriculture back in Colorado, or Denver, or some place, and when they came out here they didn't meet your specifications at all, and it was taken up with you?

A. No.

Q. You don't remember that. All right. Go ahead. Whether the eggs came from Petaluma—regardless of the original source of the eggs, the employees at Nye & Nissen, Mr. Goddard or Mr. Berman, would designate a quantity of eggs and request you to inspect it? A. Correct.

Q. At that time they would indicate that they considered that [160] quantity of eggs grade A or Procurement Grade I, II, or III?

A. Yes. Depending upon the size of the lot, we would identify the samples which our grader would designate to be looked at in the candling booth.

Q. How would you identify them?

A. At times they were stamped, at times the grader would initial them, at times the grader would number them. Different methods were used in identifying them. These cases were taken from the lot, respective lots, taken over and placed by the candling booth for grading by our grader. The cases were opened. At times the plant would offer to assist us in opening the cases and at times they

(Testimony of Dr. Robert B. Mericle.)

were busy and our grader would open the cases. The cases would then be placed on the candling bench and the grader would grade the eggs out of the respective cases and tabulated his results on the grading memoranda that would be kept for each respective case for the sample drawn. At the time he was through looking at the entire sample he would total up the columns on the grading sheets and see whether or not the eggs met the respective grade which they were offered as. If the eggs met the respective grade they were stamped as U. S. Grade AA or A, as the case may be, the designation of the grade which they graded, and they were stamped and identified as such. After that the grader would then leave the plant.

Q. Or he might go and start the inspection of another order if there happened to be two orders to inspect? A. That is right. [161]

Q. Do you know at the time you were there any departure from that general procedure which you have outlined to the Court and the jury?

A. No.

Q. That was the procedure that you saw and observed at any time you were there?

A. That's right.

Q. And you had the privilege of going there at any time you wished, did you not?

A. That's right.

Q. You were there, of course, on many occasions, as you testified yesterday? A. Yes.

Q. Now, at all times, Doctor, the eggs, that is,

(Testimony of Dr. Robert B. Mericle.)

the lots to be inspected would always be within the presence of you and the grader or inspector?

A. Yes.

Q. The selection of the cases, the sample cases, the designation of those cases would be made by you? A. By the grader.

Q. That was always done, to your knowledge?

A. To my knowledge.

Q. As I understand, the packages would be on what are called skids, is that what they are called?

A. Yes, that's right.

Q. Those skids may be moved around so you don't have to dismantle with a great deal of effort maybe 500 cases of eggs, do you? You just pulled a skid out and take the case for the sample any place you wished? A. Yes.

Q. Then the employee put the case that was designated by the inspector—a floor man of Nye & Nissen would aid in the physical labor?

A. Correct.

Q. When the eggs were taken to be inspected they would be [162] taken to a candling booth, is that correct? A. Yes.

Q. That candling booth was the booth that you described yesterday? A. That's right.

Q. In that booth there is a candle light, isn't that correct? A. Yes.

Q. The method of candling eggs today, except for the presence of electricity, is the same as it was hundreds of years ago, isn't that correct? It is a very old art, isn't it, or trade?

(Testimony of Dr. Robert B. Mericle.)

A. It is an old art, yes.

Q. But the principle is the same, that there is a light in a hollow tube or a very well-constructed light similar to the one we had yesterday—Mr. Welsh, have you got that light?

The Clerk: Here it is.

Mr. Faulkner: Q. In other words, this is a portable one? A. That's right.

Q. In these candling booths they have a permanent one which has a light in back and your opening, I think it requires about the size of a quarter.

A. Approximately that.

Q. This would be a little larger. It would be one like that. That booth is dark, is it not?

A. Yes.

Q. There is ~~a black curtain~~ in back and the particular case that the agent or the employee of the Department of Justice is using is placed upon a, not a table, but a kind of shelf in front of him, and then this light is in front of him, and [163] then he handles those eggs and puts them up to the light; is that correct? A. That is correct.

Q. In the candling of those eggs and in the inspection of the eggs during that operation, no member of the firm or employee of Nye & Nissen is in that booth, are they, while he is handling his eggs and making his inspection, he does that by himself?

A. That's right, except at times there may be one of the employees called in.

Q. Where there is some question involved?

A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. I mean the normal inspection of the eggs, the only purpose for a Nye & Nissen employee being there is to do certain physical work in making the eggs available to the inspector, isn't that right?

A. That's right. They may check at times as to how they graded.

Q. In other words, they are interested in the outcome? A. Yes.

Q. Doctor, at any time that the inspector desires he may go back and take other samples, isn't that correct? A. Correct.

Q. Although the regulations may require 5 percent as the number of cases, he has the privilege, if he wishes, to candle and inspect every egg there if he wants to? A. Correct.

Q. After the eggs have been inspected and have been passed by your inspector, if the lot involves say 100, 200 or any other number of cases, then the final act of the inspector is to stamp those cases with a stamp similar to the one we had yesterday?

A. Yes.

Q. At times the employees would accomodate the inspector in that respect, is that correct?

A. That is, under the grader's supervision.

Q. Under the grader's supervision. In other words, when that stamp is used by the employee of the producer, or the company, Nye & Nissen, the inspector would be there and it would be done in his physical presence? A. Yes.

Q. Under the literal rules he is not supposed to part with his stamp, is he?

(Testimony of Dr. Robert B. Mericle.)

A. Except where it is under his immediate supervision and he has direct control.

Q. Then that is quite permissive for him in the rush of business, where he has other work to do, to have some employee in the plant aid him in stamping the cases?

A. If he is there and supervises and has direct control over it.

Q. And has control over it. The inspector also may bring those cases directly to his own booth, is that correct? A. At times they do, yes.

Q. You indicated yesterday that in the grading and inspecting and candling of eggs that eggs, in addition to quality, must reach—for certain types of eggs, certain weights. A. Yes.

Q. That there were tolerances in respect to the quality but no tolerance whatever in respect to weight, is that right? A. That is correct.

Q. What is the weight required under the regulations, as you [165] understand them, during the period of 1942, '43, '44 and '45 for a grade AA egg, how much is it to weigh by the case?

A. Are you speaking of Large AA's or Medium AA's?

Q. Large.

A. What do you mean, by the number?

Q. Excuse me.

A. Large AA's weigh 45 pounds.

Q. Mediums? A. Weigh 40 pounds.

Q. Small? A. Small is 34 pounds.

Q. Can that weight be averaged?

A. No.

Q. There is no tolerance whatever?

A. Below the weight specification, no.

Q. For a case of eggs that is supposed to be AA and Large, every case must always weigh 45 pounds?

A. That's right.

Q. And a case of eggs of Medium Best quality must always weigh 40 pounds? A. Right.

Q. During the period of time, Doctor, that you were supervisor for the inspectors, were you inspecting eggs at various Government agencies?

A. Yes.

Q. War Shipping Administration?

A. Yes.

Q. Were those rules that you have just expressed orally applicable to the War Shipping, Navy, Marine Corps shipments?

A. That's right.

Q. No question about that, is there Doctor?

A. No.

Q. Did you ever see this bulletin put out by the War Shipping Administration, Food Control Regulation No. 14?

Mr. Hippeli: May I see it, please? [166]

Mr. Faulkner: I would ask the Clerk to mark this for identification.

(The document was marked Defendants' Exhibit E for Identification.)

Mr. Faulkner: Q. Would you recognize that as a Food Control Regulation relating to shipments to War Shipping Administration, Doctor, that were issued in July of 1944? A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. That is all. I just wanted to know if you recognize it, Doctor. I offer this in evidence, your Honor.

The Court: Admitted and marked.

(Defendants' Exhibit E for Identification was thereupon admitted in evidence.)

Mr. Faulkner: Q. Doctor, under that regulation: "Only 'Large' weight types may be supplied. Each lot of this type shall average a minimum of 45 pounds net; no individual case shall be under 44 pounds net." Is that the regulation under which eggs were supplied to the War Shipping Administration? A. At that time.

Q. Yes. A. That that was in effect.

Q. Yes. A. Yes.

Q. Prior to that time the tolerance was even greater, wasn't it? A. I don't know.

Q. Is there any question after you read that regulation now, Doctor, that you could average the weight of eggs for large [167] eggs?

A. Parficularly for the War Shipping Administration.

Q. Are you familiar with the OPA regulation on weight, Doctor? A. No.

Q. So if you had a shipment for the War Shipping Administration of 100 cases of eggs; and if 50 of them weighed 45, or 45¼ pounds, and 50 weighed 44¾ pounds, you would comply with that shipment, wouldn't you?

A. I don't know.

Q. You say you don't know.

(Testimony of Dr. Robert B. Mericle.)

A. Were you talking of the War Shipping Administration regulation?

Q. I am talking about——

A. Or the OPA regulation?

Q. I am talking about the regulation put out by —let's see, who put it out. Mr. O'Connell, Director of Food Control. Is he an officer of the War Shipping or is he an officer of the Department of Agriculture?

A. I presume Department of Agriculture. He was in Food Control Division in Washington.

Q. Is this the first time, Doctor, that you were aware of that regulation, when I advised you of it this morning?

A. I have seen it previously.

Q. What?

A. I have seen it previously.

Q. You have described here this morning how the inspector takes the eggs out of these particular cases which are designated by the inspector in proportion to the lot to be inspected and graded, and they are brought over to this booth, which is dark, and which has a ceiling and a black curtain in back of it, and the only light in that booth is the candle light; is [168] that correct? A. Correct.

Q. Will you explain to me, Doctor, how in that dark booth with a single light shining through an aperture the size of a quarter, how any inspector could even see those eggs on Exhibit 22 in that booth to aid him in handling and inspecting the eggs; will you describe that for me?

(Testimony of Dr. Robert B. Mericle.)

A. The curtain in the back of the booth can be readily withdrawn to permit the entrance of light so the chart can be noted to correlate what they see before the candle in the egg. The curtain can be withdrawn to compare that with the chart.

Q. That is your explanation of how they use it, they pull the curtain back?

A. When it is necessary to do it. I didn't say they do it for every egg that was looked at.

Q. I understood you to say it was posted on the back of that booth.

A. On the side of the booth.

Q. Yes. Isn't that what you said yesterday?

A. I said it was posted in the booth, didn't I?

Q. Yes. In other words, as the inspector stands there with this light in back, at the back wall of the booth, your testimony is that this card is there in the booth? A. It is in the booth, yes.

Q. For the aid of the inspector?

A. Yes.

Q. Tell me a single inspector who ever went out to Nye & Nissen who needed this card to aid him in inspecting eggs, Exhibit 22? Tell me the name of one who needed that card to inspect eggs.

A. It is used as an aid.

Q. Pardon me?

A. Any inspector uses it as an aid. [169]

Q. Is it not true, Doctor, that the weight of eggs sold to government agencies also may be determined by contract between the parties?

A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. So that deliveries of eggs for large, Grade AA, or large——any of these requirements which have certain standards set up by the Department of Agriculture may be modified between the shipper and the agency receiving the eggs, isn't that correct?

A. Not when they were bought on consumer grades. When they used procurement grades they modified the weights.

Q. You testified yesterday that Procurement 1 or 2 were identical with certain consumer grades which had a letter, isn't that right?

A. That is right.

Q. Procurement 1 and Procurement 2 is merely another phrase or descriptive word or words to describe the same articles as the consumer grades AA, A, and so forth, is that right?

A. Consumer also has the weight classifications that you just mentioned, that is, Large, Mediums, Small, where they do not have on the procurement grades.

Q. Are you certain that the procurement grades and the standard for procurement grades have no weight classification?

A. They have weight classifications as specified in contracts.

Q. Hasn't the Department of Agriculture set out a standard for the weights of procurement grade eggs—— A. Yes.

Q. ——that is identical with the standard set out for consumer grades AA, A and B? Aren't they identical?

(Testimony of Dr. Robert B. Mericle.)

A. The Federal [170] specifications of consumer procurement is.

Q. The Department of Agriculture has defined and fixed the standard of procurement grade eggs, and they have defined and fixed the standard of Grade AA, A, B and C, haven't they?

A. Yes.

Q. And they have fixed the weight for both? Isn't that correct?

A. Yes, they fix the weight, not on procurement.

Q. Then the Department of Agriculture has never set out standards that are applicable to procurement grade eggs, is that your testimony?

A. That is right.

Q. Doctor, one of the features of the inspection of the Department of Agriculture which you described in the plant of Nye & Nissen is to inspect for quality and for weight, isn't that correct?

A. Yes.

Q. And you described here yesterday on your direct examination the procedure for weighing eggs; do you remember? A. Yes.

Q. When eggs are inspected, we will say on July 17, 1946, as an illustrative date, and that weight is fixed, at the time and delivery must the eggs meet the specifications fixed under the standards of the Department of Agriculture? A. Yes.

Q. So that if an order was made for AA, U. S. Grade AA eggs, which require for large eggs 45 pounds in weight, and you inspect them today and they are AA eggs, and they do weigh 45 pounds, then

they must weigh 45 pounds at the point of delivery, is that your testimony? A. Yes. [171]

Q. Now, you know, do you not, as the head of that department, that at the time of delivery you may deliver eggs at the next lower grade; isn't that the standard fixed by the department?

Mr. Hippeli: What grade are you referring to, please?

Mr. Faulkner: AA.

The Witness: AA Large?

Mr. Faulkner: Q. Large.

A. Yes, that is where they inspect it at the shipping point and deliver the next lower grade at the receiving point.

Q. The next lower grade, isn't that right?

A. Yes.

Q. You know, do you not, Doctor, that eggs will deteriorate between given dates, depending on conditions under which they are held, isn't that correct? A. That is correct.

Q. And that deterioration is reflected in the weight of eggs, isn't that right?

A. Some, yes.

Q. Sometimes very substantially, isn't that correct? A. Yes.

Q. Now, then, the shipper of those eggs, if they have passed inspection in his plant and he is holding them for delivery to a Government agency who fixes the time of delivery, is not supposed to take the loss under the ordinary relations between the shipper and the Government agency occasioned by that delay, is he?

Mr. Hippeli: I object to the introduction of

(Testimony of Dr. Robert B. Myricle.)

that line of testimony at this time. We did not bring out anything about the various grades between inspection at origin and destination in [172] our direct examination. If it is material to the case of the defendant to cross-examine when we put in evidence to that effect.

Mr. Faulkner: Your Honor, the Government in its case attempted to show that so far as the weight of eggs was concerned, it was a quantity that never varied. That is the theory on which they presented this testimony. I have already shown one variance in the weight of eggs in relation to the shipper and the agency that requires them. Now I am showing that that testimony is wrong in another particular from the same witness.

Mr. Hippeli: I believe the Government's testimony on direct examination was that there is no weight tolerance allowed in consumer grade eggs. There was no testimony as to the procurement grade, the weight of the procurement grade.

Mr. Faulkner: I did not ask about procurement grade eggs, your Honor. I asked about Grade AA eggs, Grade A eggs, and Grade B eggs.

The Court: The Court is prepared to rule. The objection is overruled. Read the question.

(Question read.)

A. The inspection is usually handled just prior to shipment. In occasions where it is the eggs are not held on the shipper's floor.

Mr. Faulkner: Will you read that answer?

(Answer read.) [173]

(Testimony of Dr. Robert B. Mericle.)

Mr. Faulkner: Q. Doctor, during the period of the height of the war, when activity was great in the movement of eggs, was it not a common occurrence for eggs to be inspected by your department, to be delivered to ships that had not even arrived in the harbor, and where the time of departure of those ships was not even known to the shipping company? A. To my knowledge, no.

Q. Wasn't it a common occurrence for the shipping companies to order eggs for a ship where the whereabouts was not even known at the time the inspection was made, not only in the Nye & Nissen plant, but every egg plant, isn't that right?

A. No. They would keep an inventory. It was up to the vendors to keep the eggs in proper holding temperatures so that the quality would not deteriorate. We also mentioned in our testimony yesterday the processing of eggs, which prohibits the evaporation and loss of weight.

Q. I know we mentioned all those things but we did not mention whether or not it was the common practice for a shipper—the American President Lines, all of the large shipping companies—to order eggs for ships when they did not even know where the ship was, the Nye & Nissen plant and every other egg plant, and that you went out and inspected those eggs so there would be an immediate delivery when the ship's position was known; isn't that the fact?

A. We kept a small backlog on hand for immediate delivery, yes. [174]

(Testimony of Dr. Robert B. Moricle.)

The Court: Q. What do you mean by that?

A. Maybe if they anticipated there would be 300 cases or a 100-case order come in, we would have a hundred cases inspected at the plant ready to make immediate delivery on this particular order.

Mr. Faulkner: Q. And that delivery might be two weeks later, isn't that right?

A. The particular delivery, but if it was, the eggs were used on other deliveries which were made previous to the two-week delivery.

Q. In other words, it was quite proper if an inspection was made of eggs today, and those eggs were held up, Nye & Nissen were privileged to use those eggs for some other shipment, if they wished, and then supply other eggs to meet that shipment under another inspection, isn't that right?

A. Yes.

Q. At this very moment, Doctor, hasn't the War Shipping Administration a very large quantity of eggs in the plant of Nye & Nissen which have been inspected and which are being held for delivery under the direction of the War Shipping Administration? A. I do not know.

Q. I said the plant of Nye & Nissen. I mean the stockpile of eggs that have been gathered by Nye & Nissen which have been inspected and are being held for delivery to the War Shipping Administration. A. I do not know.

Mr Faulkner: That is all.

(Testimony of Dr. Robert B. Mericle.)

Redirect Examination

Mr. Hippeli: Q. You will recall, Doctor, during the course [175] of your direct examination Mr. Faulkner pointed out that the United States Department of Agriculture standards for an individual shell egg, which has been put into evidence, went into effect on January 3, 1943, and that the Consumer Grade standard was issued in December of 1942. Is that correct? A. That is correct.

Q. Mr. Faulkner was inquiring as to whether or not there was an individual egg standard that existed after the time when the first Consumer Grades came out, namely, in December of 1942. Was there a standard for an individual shell egg up to the time the standards came out in January, 1943?

A. Yes, there was.

Q. Were those standards officially published by the Department of Agriculture? A. Yes.

(A document was handed by Mr. Hippeli to Mr. Faulkner.)

Mr. Faulkner: This is what I asked the witness for, your Honor. We know of the existence of this. I asked him to bring it here this morning and he gives it Mr. Hippeli.

Mr. Hippeli: That was unintentional.

Mr. Faulkner: Wait a minute. That is what happened. That is what I am looking for.

Mr. Hippeli: As I recall Mr. Faulkner's request yesterday, he asked for the methods of grading eggs, not for the standards of eggs. However, we

(Testimony of Dr. Robert B. Meriele.)

are offering it in evidence now and it is available to Mr. Faulkner for any purposes to which he desires to put it. [176]

Mr. Faulkner: All right, as long as we get it here, get it into evidence.

Mr. Hippeli: May it go into evidence?

Mr. Faulkner: Yes, sir.

Mr. Hippeli: Thank you.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 32.)

Mr. Hippeli: Q. You are familiar with Government's Exhibit 32 in evidence, are you not?

A. Yes.

Q. Do you recall approximately when those standards went into effect?

A. I think 1935.

Q. How long did they remain in effect?

A. Until the new standards went into effect as Exhibit 21 or 22.

Q. I will show you U. S. Exhibit No. 21, which is the United States Department of Agriculture specifications for official United States standards for the quality of individual shell eggs, and I will also show you U. S. Exhibit No. 32, which is also a United States Department of Agriculture standard for individual shell eggs. Was U. S. Exhibit No. 32 in effect up until the time that U. S. Exhibit No. 21 became effective?

A. Yes, it was.

(Testimony of Dr. Robert B. Meriele.)

Q. Are you familiar with the grades of individual shell eggs contained in Exhibit No. 32?

A. Yes.

Q. Were those grades depicted on a chart which was published by the United States Department of Agriculture? A. They were. [177]

Q. And is this the chart?

A. That is the chart.

Mr. Hippeli: I desire to offer this chart into evidence at this time, your Honor.

Mr. Faulkner: May we have it clearly defined what it purports to be, your Honor?

Mr. Hippeli: Will you mark it for identification?

(The chart was thereupon marked U. S. Exhibit 33 for Identification.)

Mr. Hippeli: Q. Does U. S. Exhibit No. 33 for Identification, which is a chart entitled "United States Standards for Individual Eggs," and which chart contains a series of eggs under a title containing a name grade as distinguished from a letter grade—does that chart contain the minimum requirements set forth by the United States Department of Agriculture and contained in United States Exhibit No. 32, which is the United States standards for individual shell eggs effective February 16, 1934? A. Yes, sir.

Mr. Hippeli: The Government at this time offers Exhibit 33 for Identification into evidence.

The Court: Let it be admitted and marked.

(Testimony of Dr. Robert B. Moriele.)

(U. S. Exhibit 33 for Identification was thereupon received in evidence.)

Mr. Hippoli: Q. Was Government's Exhibit No. 33 officially published by the Department of Agriculture, Doctor? A. Yes.

Q. Was it published in a manner similar to Exhibit No. 22? [17] A. It was.

Q. Was it distributed in a similar manner?

A. Yes.

Q. Doctor, on cross-examination Mr. Faulkner directed your attention to whether or not you received telephone calls from any of the defendants requesting inspection service at the defendant's plant in San Francisco? Do you recall that line of cross-examination? A. Yes.

Q. Directing your testimony at this time to that subject matter, would you explain to the Jury your official duties pertaining to inspections?

Mr. Faulkner: We object to that on the ground it has been asked and answered and it is not proper redirect examination.

The Court: He may answer.

Mr. Faulkner: Exception.

A. My duties and responsibilities are to see to it that the rules and regulations of the Secretary are carried out with reference to the inspection and grading of eggs.

Q. And you supervise the inspection, do you not?

A. Supervise directly the inspectors grading eggs under Federal specifications.

(Testimony of Dr. Robert B. Mericle.)

Q. How many inspectors have you under your supervision? A. Approximately 175 to 200.

Q. Are you primarily an inspector yourself, or, rather, are you not a supervisor of inspectors?

A. Supervisor of inspectors. [179]

Q. Who does the majority of the actual inspection? A. The inspectors themselves.

Q. When did you have occasion to inspect?

A. Just at various times when I am either checking the work of the individual inspectors or else where there is trouble arising in a plant and there is difficulty as to the particular grade of the lot.

Q. How do you receive telephone calls in your office requesting inspection?

A. Most of those are received by a clerk in the office. If requests come in and the clerk is not there, one of the men or anybody who is in the office will answer the telephone call.

Q. Have you had conversations with the defendants other than telephone conversations?

A. Yes.

Q. Where would those conversations take place?

A. The majority of them were in the defendant's plants.

Q. Has the defendant Berman ever told you to inspect a certain lot of eggs? A. Yes.

Q. Was that by telephone? A. Verbal.

Q. Where?

A. A conversation at the time we arrived at the plant.

(Testimony of Dr. Robert B. Meriele.)

Q. It would be down at the plant, then?

A. That is right.

Q. Do you recall when that would be?

A. Just be notifying us and identifying particular lots for inspection.

Q. About what time?

Mr. Faulkner: You mean the date, don't you?

Mr. Hippeli: The date, pardon me. Approximately.

The Witness: September, 1944.

Mr. Hippeli: Q. Did you ever see him earlier than that?

A. Pardon?

Q. Did you ever see Mr. Berman and have a conversation pertaining to a lot of eggs to be inspected prior to September, 1944? A. Yes.

Q. About what time was that?

A. February or March.

Q. Did you ever have any conversation with Mr. Goddard concerning the inspection of eggs?

A. Yes.

Q. And was that by phone or a face-to-face conversation?

A. A face-to-face conversation.

Q. Where was that? A. At their plant.

Q. What was the date of that conversation?

A. About the same time.

Q. Could you tell us generally about how many times you have either inspected eggs yourself or accompanied United States Department of Agriculture inspectors when they inspected at the defendant's plant in San Francisco?

(Testimony of Dr. Robert B. Merrick.)

A. Probably eight or ten times.

Q. And that is during the period of time when you have been here, is it not?

A. That is right.

Q. Mr. Faulkner referred to a certain inspection down at the Nye & Nissen plant in San Francisco in the month of September in 1944. If you will recall, it was at the time when he placed [181] many men and many eggs in a small booth. Do you recall that conversation? A. Yes.

Q. Did you receive a request to investigate that particular lot of eggs from any of the defendants?

A. No.

Q. How did you happen to go down there and grade those eggs?

A. I went down at the request of the graders to assist them in the grading.

Q. And what did you do?

A. I candled some of the eggs.

Q. In connection with the plant. Start in when you first arrived at the plant.

A. When we arrived at the plant, why, Mr. Berman met us at the plant and identified the lot which was to be graded, as previously mentioned.

Q. Do you recall the grade?

A. Large, Grade A.

Q. Was anyone else present?

A. Mr. Goddard was present.

Q. Did he also make that request?

A. Yes.

(Testimony of Dr. Robert B. Meriele.)

Q. What did you do, or what was done, in your presence at that time?

A. The samples were identified and taken to the inspection booth and candled as previously mentioned. After the eggs were candled—a number of cases were candled. I candled some and the graders candled some—in checking those cases the graders' results were practically identical with my results and the eggs did not meet the grade as offered.

Q. Will you tell us the conversation that occurred between you and Mr. Berman and Mr. Goddard?

The Court: Did you fix the time? [182]

Mr. Hippeli: The conversation is fixed as to this particular meeting in September, 1944, in the plant of Nye and Nissen.

The Court: Proceed.

Mr. Faulkner: Is this offered on all counts of the indictment?

Mr. Hippeli: The offer is restricted to the conspiracy count of the indictment.

Mr. Faulkner: And against the persons who participated in the conversation.

Mr. Hippeli: Against all the conspirators.

Mr. Faulkner: We object to it on the ground no foundation has been laid, your Honor. It would only be binding on the men who participated, and as to them we have no objection.

The Court: It will be limited at this time to those who participated in the conversation. Proceed.

(Testimony of Dr. Robert B. Mericle.)

Mr. Hippelis: Q. The question, if you recall, Doctor, was what conversation did you hear take place between Mr. Goddard, Mr. Berman and yourself at that time?

A. At the time, after we had checked our required samples, we notified Mr. Goddard and Mr. Berman that the eggs did not meet the grade as offered, that is, U. S. Grade A Large, and Mr. Berman and Mr. Goddard proceeded to examine a number of the cases to see if in their opinion they did not meet the grade as offered. After a considerable conversation took place, why, they proceeded to have Mr. Moncharsh come down and also check the eggs which were in [183] question. Mr. Moncharsh, Mr. Goddard and Mr. Berman were all of the opinion that the eggs met the grade as offered.

Q. Did they say that? A. Yes.

Q. In what language? How did they express it to you?

A. They just expressed it that the eggs met the grade, as offered, that is, U. S. Grade A, Large.

Q. At any time in the course of your conversation did you make any reference to U. S. Exhibit No. 22? A. Yes.

Q. Where was that or a facsimile of U. S. Exhibit 22? A. It was in the candling booth.

Q. Did this conversation take place in the candling booth or in the vicinity of the candling booth?

A. That is right.

Q. During the course of that conversation was any reference made by you, by Mr. Moncharsh, by

(Testimony of Dr. Robert B. Mericle.)

Mr. Berman, or by Mr. Goddard to U. S. Exhibit No. 22? A. Yes.

Q. How did they refer to it and who referred to it?

A. I referred to it in comparing the egg with the chart as to meeting the requirements for U. S. Grade A.

Q. Did any of the defendants who were present make any replies to your comparison?

A. They replied as to their interpretation, that the eggs did meet the requirements of Grade A.

Q. Did they make a similar comparison to the chart?

A. They were there when the comparison was made.

Q. No, what I asked you, Doctor, did any of those who were present other than yourself and your inspectors compare an egg in [184] the case of eggs that was to be graded with the egg appearing on that chart, if you will recall?

A. They did not themselves, to my knowledge, no.

Q. You made the comparison in their presence?

A. Yes.

Q. Were you all present in the booth at the same time?

A. Not at the same time. The booth is not large enough to permit all the men to be in.

Mr. Faulkner: We object to that as not proper redirect examination. The witness yesterday described how they were in the booth.

(Testimony of Dr. Robert B. Mericle.)

Mr. Hippeli: I do not think it was brought out whether they were in there at the same time or not, your Honor.

Mr. Faulkner: I think it was brought out very clearly how they were in the booth.

Mr. Hippeli: The question put to the witness was whether or not all of the defendants who were present and whether all the inspectors were present——.

The Court: The testimony yesterday was there wasn't room enough in the booth for all of them.

Mr. Faulkner: Yes. There were two inspectors, Mr. Moncharsh, and the doctor in there at one time, but Mr. Goddard, Mr. Berman, the two inspectors and the doctor were not in at the same time.

The Court: It is time for a recess. The jurors may be excused.

(Recess.) [185]

Redirect Examination

Mr. Hippeli: Q. Mr. Faulkner, in cross-examinging you, Doctor, has inquired about the manner in which the United States Department of Agriculture chart for the standards of individual shell eggs, Exhibit 22, how that chart would be used by the candler. Will you explain to us how often would an apprentice or a candler who has just started in, how often would he have occasion to refer to the chart?

A. A new candler could refer to it consider-

(Testimony of Dr. Robert B. Meriele.)

ably because it is a measuring stick and they use that visually to compare it with the interior quality of the egg as they see it.

Q. As he becomes proficient would he refer to Exhibit 22 as often as he would when starting?

A. No.

Q. How often, then, would an experienced candler refer to that chart?

A. An experienced candler would refer to it just occasionally.

Q. Directing your attention to the cross-examination pertaining to the time a particular egg was before the candle in the candling process, you will recall you stated in an hour a man can handle how many cases?

A. About three cases.

Q. At my direction did you compute how long each egg in the three cases would be before the candle?

A. Figuring that out it came to 3 1-3 seconds.

Q. An egg? A. Yes.

Q. As a matter of fact, how long is the egg held before the candle? Is there any definite period of time?

A. No definite period [186] of time. It is in the process of candling, the process of bringing the egg to the candle and placing it back in the case.

Q. Do you lift one egg out of the case at a time?

A. No. You lift four; two eggs in each hand.

Q. Will you go through the motions for the jury's benefit?

(Testimony of Dr. Robert B. Mericle.)

A. There are two eggs in each hand. You take the filler out of the case. The eggs are loose in the case. As a rule, you will pick up four eggs in two hands, two in one hand and two in the other. The first hand you put up to the light, you will have the large end up, you will examine that egg, bring it down; bring the other hand up with one egg. At the time this hand is down you turn the egg, bring the other egg up, so it is a continual process of putting your hands, each hand up to the candle.

Q. How long do you leave it before the candle?

A. Long enough to grade the interior quality of the egg.

Q. Do different candlers grade at different speeds, depending upon the candler? A. Yes.

Q. What is meant by "flashing an egg?"

A. That is where they take up three or four eggs, maybe, in one hand, and put them before the candle in a hurry for a moment, just to bring out the loss or rot; just a flash. It is not a candling process, just a matter of picking out your loss in cases.

Q. Is flashing an egg distinguished from candling an egg?

A. Yes, two distinctly different processes. [187]

Q. Is flashing an egg permitted in egg grading in accordance with the United States Department of Agriculture standards?

Mr. Faulkner: I will object to that as not proper

(Testimony of Dr. Robert B. Mericle.)

redirect examination. There is no issue regarding flashing eggs.

Mr. Hippeli: I will ask this: Was the method of candling described by Mr. Faulkner on cross-examination candling an egg or flashing an egg?

A. At the stage which he said they didn't have time to look at the egg, that would be flashing. In the candling process you will have sufficient time to look at the interior quality.

Q. Is flashing an egg permitted in accordance with the U. S. Department of Agriculture standards? A. No.

Q. This morning you handed Mr. Faulkner Defendants' Exhibits C and D for Identification, both of which documents are entitled, "Memorandum of War Food Administration" and contained therein is the mechanics for shell grading an egg. Were memoranda setting forth the mechanics for shell grading eggs in effect before the effective date of defendants' exhibit C for Identification, February 8, 1944? A. We had regulations; yes.

Q. Did you look at them? A. Yes.

Q. Were they in your possession down there?

A. No.

Q. Were the regulations, or the directives, or memoranda that were issued to the United States Department of Agriculture [188] inspectors prior to February 8, 1944, similar to the procedure contained in Defendants' Exhibits C and D for Identification? A. They were.

Q. These two exhibits are an embodiment of the

(Testimony of Dr. Robert B. Mericle).

prior practice of United States Department of Agriculture inspectors? A. Yes.

Q. In explaining the manner in which eggs were candled at the defendants' plant in San Francisco your testimony was restricted and your experience was restricted to defendants' plant at Seventeenth and Missouri Streets in San Francisco; is that correct? A. Yes.

Q. Did you ever candle or inspect at their Townsend Street plant? A. No.

Q. There is a distinction between a United States Consumers Grade and a United States Consumers weight class, is there not? A. Yes.

Q. Will you clarify that for the jury? It was rather confusing in Mr. Faulkner's cross-examination.

Mr. Faulkner: I object to that type of redirect examination. The jury may have a very clear picture of what was said by the witness. He is a clairvoyant if he knows whether the jury is confused.

The Court: Reframe your question.

Mr. Hippeli: Q. Will you explain the distinction that exists between U. S. Consumers Grade and U. S. Consumers weight [189] standard?

A. U. S. Consumers Grade, as we stated, are Grade AA, Grade A, Grade B, and Grade C. In those various grades they have the size designations.

Q. They pertain to the quality of an egg?

A. Yes.

(Testimony of Dr. Robert B. Mericle.)

Q. They pertain to the quality regardless of the weight? A. Yes.

Q. They pertain to the quality regardless of weight of individual eggs or a group of eggs, namely, a case of eggs or a dozen eggs, or any group?

A. Yes.

Q. Your U. S. Consumers weight standard pertains to the weight of an individual egg or a group of individual eggs, does it not?

A. That's right, regardless of grade.

Q. Regardless of grade? A. Yes.

Q. Keeping that distinction in mind, is there any weight tolerance allowed for U. S. Consumers Grade classifications for classes of shell eggs?

A. No, there is no tolerance.

Q. Is there a disfinction between Consumers grades of eggs and Procurement grades of eggs?

A. Yes.

Q. Your testimony immediately prior has been restricted to Consumers grades of eggs.

A. That's right.

Mr. Faulkner: We object to redirect examination of this type. The witness testified upon direct examination clearly and unequivocally that consumers grade eggs and Procurement grade eggs were, in part identical, the distinctions and standards were identical. All of these questions are leading and suggestive on that subject to clarify something which exists [190] in Mr. Hippeli's mind, but the witness' testimony is before the court. He has shown the identify of these various grades. Now

(Testimony of Dr. Robert B. Mericle.)

they are trying on redirect examination to break that down which they have developed themselves. We submit the purpose of redirect examination is not to do what they are doing here.

Mr. Hippeli: What I am attempting to do is to qualify the testimony that Mr. Faulkner brought out on cross-examination to the effect when referring to defendants' exhibit E that there was a permissible weight tolerance on certain grades of eggs. I am attempting to clarify what the grades are, and if there is a weight tolerance concerning the grade of eggs that tolerance may be allowed.

Mr. Faulkner: We respectfully submit that when the War Shipping Administration, Food Control, put out a bulletin that is clear and unambiguous, that this witness should not be permitted to testify on redirect examination about the subject matter of the authenticity of this document——

The Court: Read the question.

(Question read.)

Mr. Faulkner: The point of my objection is—here is what the regulation says, it is evident this regulation applies to Consumer grade eggs and Procurement eggs on its face. It says here only the following grades may be used, U. S. Grade A Consumers—that is, the Consumer grade, or the U. S. Procurement I and II. Then it defines the weight as to Consumer [191] grade eggs and Procurement eggs, and we submit this witness cannot take that regulation——

The Witness: I say the regulation does not

(Testimony of Dr. Robert B. Mericle.)

define the weight of Procurement grades and Consumer grades.

Mr. Faulkner: I will submit it to your Honor. That is a legal question for the court.

The Court: The Court will allow the testimony. Objection overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Your testimony to this point has been restricted to Consumer grades of eggs——

Mr. Faulkner: I object to that.

The Court: The form of the question is objectionable. Sustained.

Mr. Hippeli: Q. Is there a distinction between a Consumers Grade and Procurement Grade eggs?

A. Yes.

The Court: What is it?

A. The Procurement grades were set up primarily for use by the armed forces. They were set up in Roman numerals, as we explained, I, II, III and IV. The Procurement I is identical with Consumers Grade A. The Procurement II is dropped down to 60 per cent of the interior quality of U. S. Grade A, and the balance to be made up of U. S. Grade B and the tolerance, certain percentage of tolerances that are permitted. They are made up of gradations of Grade A and Grade B eggs. The [192] Procurement III is made up of 40 percent of the interior quality of U. S. Grade A and the balance B, plus the tolerance, and Procurement IV consists of 20 per cent of U. S. Grade A and the remainder of U. S. Grade B and the tolerances.

(Testimony of Dr. Robert B. Mericle.)

Mr. Hippeli: Q. Those are grade tolerances?

A. Yes.

Q. Are they weight tolerances? A. No.

Q. Is there any weight requirement for Procurement grades of eggs?

Mr. Faulkner: We object to that as calling for the conclusion of the witness. That bulletin speaks for itself.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: A. No.

Mr. Hippeli: Q. How are the weights of Procurement grade eggs determined?

A. The weights are determined by the contract specifications.

Q. Well, what do you mean by that?

A. Well, if the contract is let with a requirement of 45 pounds, or an average weight, that is the weight that prevails. On Procurement grades they may be bought by contract on 40 pounds. That is the prevailing weight for the delivery; it depends upon the weight specified in the contract at the time of contract.

Q. Directing your attention to Defendants' Exhibit E, will you tell us what that is, please?

A. This is a Food Control regulation which they put out pertaining to orders inspected [193] and graded for the War Shipping Administration.

Q. What does it contain, what is the first subdivision——

(Testimony of Dr. Robert B. Mericle.)

Mr. Faulkner: We will object to that. It speaks for itself.

The Court: I will allow it. The jury may never know what it is unless it is testified to. Overruled.

The Witness: Speaks of the quality, it states the quality may be U. S. Grade A Consumers or they may be U. S. Procurement I or II.

Mr. Faulkner: The witness is not answering the question. He was asked to state what that says there.

The Court: Read the question.

(Question read.)

Mr. Hippeli: He read it.

Mr. Faulkner: Is that what it says there?

The Witness: That's right. Do you want to check it?

Mr. Faulkner: No, I don't want to check it, but you must have memorized it. You weren't looking at it.

Mr. Hippeli: That is his business.

The Court: Proceed.

Mr. Hippeli: Q. Does subdivision I mean that the War Shipping Administration is directing its agents to buy Consumers grades or Procurement Grade eggs?

Mr. Faulkner: We will object to that——

The Court: It is leading and suggestive. Reframe the question. [194]

Mr. Hippeli: Q. Will you read subdivision (2) in Defendants' Exhibit D?

A. Subdivision (2) states—it deals with weight:

(Testimony of Dr. Robert B. Mericle.)

"Only 'large' weight types may be supplied. Each lot of this type shall average a minimum of 45 pounds net; no individual case shall be under 44 pounds net."

Q. To what grade of eggs does that pertain?

Mr. Faulkner: I object to that as calling for an opinion and conclusion of the witness.

The Court: He may answer.

Mr. Faulkner: Exception.

A. That deals with the Procurement grade large; large Procurements I and II.

Mr. Hippeli: Q. Is that a specification in accordance with the requirements of Procurement Grade I fixing the weight for Procurement Grade eggs? A. Yes, it is.

Q. Is there anything in Defendants' Exhibit D that would authorize the War Shipping Administration to fix the weight requirements for Consumer Grade eggs? A. No.

Q. So that if War Shipping Administration purchases a Consumers Grade eggs, a Medium Consumers Grade egg, that case of eggs must weigh a net of 40 pounds a case?

A. That's right. [195]

Q. For the weight of a case of eggs to vary from the weights prescribed for Consumer Grade eggs B, United States Department of Agriculture, must that case of eggs be purchased under another grade? By that I mean a Procurement grade?

A. It must be purchased under a Procurement grade if the weight is going to vary.

(Testimony of Dr. Robert B. Mericle.)

Q. And if the purchase is made under Consumer grade there may be no variance in weight?

Mr. Faulkner: We object to that, your Honor. We are not bound by the interpretation of this witness. It is not in accord with the regulation. It is not in accord with the standard. It is not in accord with the writing——

The Court: You may cross-examine on that.

Mr. Faulkner: It is a conclusion and opinion on the meaning of a document.

The Court: The Court has allowed the testimony.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Defendants' Exhibit E refers to fresh eggs. What is a fresh egg?

A. A fresh egg is an egg that has the characteristics due to—a fresh egg is one that has all the appearance of being freshly laid. On its broken-out appearance it appears as a yolk which is upstanding. It has the thick white, which holds the yolk well centered. It has a small amount of thin white around the outside. It keeps in a small circle when broken on a flat surface. [196]

Q. Is there a maximum egg requirement for a fresh egg? A. A maximum? No.

Q. Is there a minimum? A. Minimum.

Q. What is it? A. For a fresh egg?

Q. Yes. A. No definition for a fresh egg.

Q. Isn't a fresh egg any egg less than 30 days old?

(Testimony of Dr. Robert B. Mericle.)

Mr Faulkner: Now, your Honor—I do not want to object, Mr. Hippeli, but——

Mr. Hippeli: Pardon me, Mr. Faulkner.

Q. May the Consumer grade of a lot of eggs which has been inspected by United States Department of Agriculture inspectors be lower at destination than at the time of inspection? A. No.

Q. May the grade of Procurement Grade eggs be lower at destination than at the time of inspection? A. Yes.

Q. May the grade of Procurement Grade eggs be of lower grade at destination than at the point of inspection? A. Yes.

Q. Is that the grade to which it may descend—is that set forth in a specific regulation?

A. No.

Q. Procurement Grades are for the use of the Army, is that right?

A. That is right, the armed forces, primarily.

Q. You are not familiar with all their regulations? A. No.

Mr. Hippeli: That is all.

Recross-Examination

Mr. Faulkner: Q. Doctor, you testified a little while ago that in your opinion an ordinary grader, efficient grader [197] would candle about three cases of eggs an hour, is that right?

A. That is right.

Q. And you made a mathematical calculation at the direction of Mr. Hippeli, and you reached

(Testimony of Dr. Robert B. Mericle.)

a conclusion, and testified to it, that candling three cases of eggs an hour, the candler would hold each egg before the candle three and a half seconds, is that right? Isn't that your answer?

A. That is the time that is allowed for the candling of each——

Q. I am asking you if that is what you testified to.

A. Not 3.3 seconds before the candle, no.

Q. In other words, the operation would work out mathematically so that if you candled 18 eggs a minute to fill three cases, here would be 3-1/3 seconds assigned to each egg, isn't that the way you did it? A. That is right.

Q. You have 1080; you divided it by 60 and then divided that by 60 and got 3-1/3, isn't that right?

A. Yes.

Q. That 3-1/3 seconds hasn't any relation whatever to the actual time that the candler holds the egg before that light, has it?

A. Not specifically before the light. It is the time that is permitted to handle each egg from the case and place it into respective grade.

Q. You have observed, naturally, in your work egg candlers at work in the Nye & Nissen plant and perhaps other plants, have you not?

A. Yes.

Q. When they take a case of fresh eggs and start to candle [198] them, how many variations of quality are involved in the candling?

Mr. Hippeli: Pardon me. I did not get the

(Testimony of Dr. Robert B. Mericle.)

question. Is this when the Nye & Nissen candlers are candling, or when the United States Department of Agriculture inspectors are candling?

Mr. Faulkner: We are talking about candlers who are doing three cases an hour candling fresh eggs; how many variations of quality of eggs are they candling for?

Mr. Hippeli: I object to that question as ambiguous, in that you did not define whether it is an Agriculture candler or a candler of the plant, candling eggs, when they first come in, or an Agriculture inspector candling a lot submitted to him for inspection.

Mr. Faulkner: Q. Do you understand the question, Doctor? A. I think so.

Q. Will you answer it, please?

A. It depends upon the particular plant. Different companies have different number of grades. Some companies will have a large number and other companies will have a small number to grade into.

Q. Then the question is not clear. Mr. Hippeli is right. In a typical egg plant the egg graders for that plant are candling fresh eggs. I am asking you, from your experience, how many qualities or variations of qualities are they candling for in that operation, in that normal operation?

A. I still maintain [199] it depends upon the particular firm that is candling.

Q. What is the maximum you have ever seen?

A. Some have candled from 12 up to 14.

Q. In other words, is it not true that a candler

(Testimony of Dr. Robert B. Mericle.)

can candle three to four cases, an efficient candler, in an hour candling for from 12 to 14 grades of eggs? A. Yes, if they are efficient.

Q. So that in this 60 seconds, where you have assigned three and a half seconds to each egg, the fact is to candle that number of eggs you have to get the fresh eggs from the producer, that is: the egg rancher, you have to open it, and take out —what do you call the term to describe the three dozen? A. The filler.

Q. You take out the filler, and you place that near the candler; isn't that the operation? You take the filler out.

A. Take the filler out before candling, yes.

Q. And you put it near the candle, isn't that right?

A. The filler is just laid up on a shelf.

Q. Pardon me?

A. The filler is just laid up on the shelf. Are you speaking of us running the inspection, or are you speaking of the ordinary candler?

Q. During the ordinary candling, not inspection.

A. That is what I thought.

Mr. Hippeli: Candling by whom?

Mr. Faulkner: Candling by a candler in an egg plant that [200] he has seen many, many times.

Mr. Hippeli: A Government candler or a plant candler?

Mr. Faulkner: Q. Have you any idea in your mind, Doctor, that I am talking about a Government inspector candling eggs?

(Testimony of Dr. Robert B. Mericle.)

A. No, you have reference to a specific candler employed by any egg firm, who is candling as a daily routine procedure for any egg company.

Q. Doctor, now an inspector for your department takes a great deal more time than one of those graders, doesn't he? A. Yes.

Q. Taking that grader in a typical plant, after they put the case in close proximity to the light, they then start inspecting the eggs before that light, and they will parcel those eggs out in 14 different cases along their shelves, isn't that right?

A. That is right.

Q. And in addition to that, when an egg has the feel that it is not up to weight, they have a little scale there, haven't they, and they check with it?

A. Yes.

Q. They put it on there, and if it tips the scale it will go in one place, and if it does not, it will go in another place, isn't that right?

A. That is right.

Q. Then if the eggs that are observed by those graders, in addition to the 14 grades there, if the egg is not any good it will be put over in a place or may be broken, isn't that right, as they go along? Bad eggs are put in a different place other than those they are grading for, isn't that right?

A. Yes, sir. [201]

Q. And then when they have done that, they then fill those boxes up, and then someone takes the box that is immediately next to the right away, and after all of those operations have been done

(Testimony of Dr. Robert B. Mericle.)

they will candle 1080 eggs an hour; that would be three cases or maybe a little more for an efficient grader, isn't that correct?

A. About three cases.

Q. So that will come back to your testimony yesterday afternoon that the rapidity with which they hold the egg to the light is almost faster than the eye; you can hardly follow the egg, isn't that correct, by an ordinary efficient candler?

A. As I recall, I contested your question yesterday on that.

Q. You said almost. You did not say that you could not follow it, but you almost could not follow it?

A. You have to or you are not going to see the eggs. It is not faster than the eye or you would never see what was in the egg.

Q. I mean for the layman to watch them. The grader takes that egg, takes a quick look at it, and switches that egg so fast you can't see how she does it if you have never seen it before, isn't that right?

A. It may appear that way to somebody who is not familiar with egg candling, but anybody who is familiar with egg candling can readily see.

Q. I would like you to visualize the length of time of four times 3½; that would be 14 seconds. The candler does not use anything around 14 seconds in holding those eggs before the light, isn't that true? Isn't that correct?

A. I never [202] put a stop watch on it, but

(Testimony of Dr. Robert B. Mericle.)

I would say they take sufficient time to hold the egg there long enough to see what

Q. To reach a determination?

A. To reach a determination as to what the inferior quality is.

Q. And the grader reaches that determination. Ordinarily in the plant they are grading fresh eggs, isn't that right, in an ordinary plant where you get eggs from a rancher; they are grading fresh eggs?

A. That depends. Some plants grade fresh, some grade storage, some grade——

Q. I mean eggs that come from a rancher, they are grading fresh eggs?

Mr. Hippeli: May the witness complete his last answer? He said some grade fresh, some grade storage, some grade—and he stopped.

Mr. Faulkner: Withdraw that question.

Mr. Hippeli: No, the question is in and I would like to have it answered.

The Court: He has withdrawn that question. Be seated, please.

Mr. Faulkner: Q. In other words, when you are grading eggs from ranchers you are not grading storage eggs, are you?

A. That is correct.

Q. You are ordinarily grading fresh eggs?

A. Yes.

Q. When you have graded the eggs, Doctor, that is in the process in the typical plant, and the eggs are in a box, and [20C] that box is supposed to

(Testimony of Dr. Robert B. Mericle.)

contain AA eggs or A eggs, or whatever it is; there are fourteen of them—at the time they go in that box, it is the opinion under the practice of the grader; the grader believes that that egg should go in a AA box, or an A box, and so on down the line, isn't that correct? A. That is correct.

Q. That is the opinion of the grader. Now, that is an operation which occurs in the ordinary producers plant that is like Nye & Nissen?

A. But in that process, candling the various fourteen cases that you have mentioned——

Q. Yes.

A. ——there is more than half of those into which a very minimum percentage of eggs ever go in out of each case that is candled. They are there just to catch the few Dirties and that. They are not cases that are used consistently, and there are never many eggs put in. There may be a few checks put in, maybe a few Leakers, maybe a Dirty egg. There is a case there as a reserve in case that that egg shows up in the candling process.

Q. In other words, to get it clear, Doctor, suppose in a typical egg plant they were candling eggs that had come in from the ranches that morning.

A. Yes.

Q. And in the course of the ordinary plant nearly all of those eggs, so far as quality was concerned, would be fresh, fine eggs, wouldn't they?

A. That is right.

Q. And then you would have eggs that were

(Testimony of Dr. Robert B. Merjele.)

dirty; you would [204] have eggs that would have blood spots in them, or you would have these variations which would require you to set those aside, but the majority go to the grade A or AA box, is that right? A. That is right.

Q. And that percentage would be high. Now, in the box that you are putting the AA or the A, whichever it might be, the grader does not, merely because there is a tolerance in this grading, as much as 80 per cent, up to a standard and 20 per cent, have put only eggs in there which in their opinion are AA, and then when it comes time to inspect them, you may find a deterioration that would cross some of them out, and if that does not reach greater than 20 per cent they pass, isn't that about it? A. That is correct.

Q. You have testified that the matter of tolerance in the weight of eggs has application only to Procurement grade eggs, is that right?

A. That is correct.

Q. I call your attention to the fact that this bulletin says, in paragraph 1, as follows:

"Only the following grades may be used: U. S. Grade A, Consumer or U. S. Procurement I or II."

Now, a method of ordering for the War Shipping Administration is U. S. Grade A, isn't it, with the word "Consumer" in brackets?

A. It says, "or" in there, also, does it not?

Q. Don't argue, please. May I have the question?

(Question read.) [205]

(Testimony of Dr. Robert B. Meriele.)

A. That says, "of U. S. Procurements I or II."

Q. I will withdraw the question, because I do not think you have it clear. It is your testimony that the description of weights appearing in paragraph Roman numeral No. II in that bulletin has no application to Consumer Grade A eggs?

A. Yes.

Q. What do you base that on? Withdraw that. Will you read paragraph 1 and then read paragraph 2?

The Court: Read it so the Jury may hear it.

The Witness: Paragraph 1:

"Only the following grades may be used: U. S. Grade A," and then in parenthesis (consumer or U. S. Procurements I or II)."

Paragraph 2 deals with weight:

"Only 'large' weight types may be supplied. Each lot of this type shall average a minimum of 45 pounds net. No individual eggs shall weight under 44 pounds net."

Mr. Faulkner: Q. It is your interpretation of those two paragraphs that paragraph 2 has only application to Procurement I's and II's, is that right? That is how you interpret those words?

A. Correct.

Q. Have you any bulletin or any authorization of the War Shipping Administration, the Food Control Department, or the Department of Agriculture that is in accord with your interpretation of that language?

A. Our Federal specifications in an exhibit at

(Testimony of Dr. Robert B. Mericle.)

the present time state the minimum weight [206] requirements for Consumer grades.

Q. Are they later in point of time than July 26, 1944?

A. They are in effect in July—the date you just mentioned there in 1944, the Consumer weight classes were in effect at that time.

Q. You testified further on your redirect examination that there was no tolerance permitted, and that if the weight of the egg at the point of delivery does not meet the requirements of the standards they do not pass, is that right?

A. That is correct.

Q. And the same bulletin, paragraph 7, will you read that, please, aloud to the jury?

A. "Eggs must be inspected and graded by the Office of Distribution, War Food Administration, before delivery to the pier for loading aboard the vessels. Inspection and grading certificates dated up to 24 days prior to delivery for storage eggs and 21 days prior to delivery for fresh eggs will be honored, providing that the eggs are not damaged and have been held under proper refrigeration from the time of inspection to the time of delivery, and so certified by supplier on the sales invoice."

Q. So that if the eggs pass the inspection for weight 21 days before delivery, they are accepted regardless of weight at the time of delivery, aren't they?

(Testimony of Dr. Robert B. Mericle.)

A. They are not checked at the time of delivery.

Q. So that the weight at the time of delivery does not make [207] any difference, does it, providing they have been delivered within 21 days of the date of inspection at the point of origin, isn't that right, if they are fresh eggs? Isn't that correct, Doctor? A. Yes.

Q. Now, you have testified, Doctor, in your direct examination and on your redirect examination——

The Court: It is now twelve o'clock. The jurors may be excused until two.

(A recess was taken until 2:00 o'clock p.m.)

Afternoon Session, January 17, 1945, 2 p.m.

The Court: Waive the roll call; stipulated all the jurors are seated in the box. Proceed.

Mr. Pratt: If the Court please, at this time I want to put into the record a stipulation or concession or admission by defendants as follows:

That at all the times mentioned in the indictment, Nye & Nissen was a corporation organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California, and with plants in the said City and County of San Francisco, and in the City of Petaluma, County of Sonoma, State of California; that at all times

(Testimony of Dr. Robert B Mericle.)

mentioned in the indictment Nye & Nissen, a corporation was engaged in the business of purchasing eggs, butter and cheese, and of selling eggs, butter and cheese, and further, that during all of these times the defendant Abraham Moncharsh was president of said corporation.

Mr. Faulkner: So stipulated, and that may be deemed a fact in the case, your Honor.

The Court: Very well.

Mr. Hippeli: Doctor, will you take the stand?

DR. ROBERT B. MERICLE,

recalled.

Recross Examination (Continued)

Mr. Faulkner: While we are waiting for certain documents, your Honor, I will ask the doctor a question on a subject that does not quite follow the sequence I had in mind.

Q. Doctor, this morning you gave some testimony on your redirect examination concerning fresh eggs. It is a fact, is it not, Doctor, that an egg which is referred to in the standards established by the Department of Agriculture as AA may be a fresh egg, isn't that correct?

A. Yes.

Q. A standard fixed by the Department of Agriculture as A may be a fresh egg?

A. Yes, sir.

Q. And the standard fixed by the Department of

(Testimony of Dr. Robert B. Meriele.)

Agriculture defining a B egg may be a fresh egg; that is correct, is it not? A. Yes.

Q. And a standard referred to by the Department of Agriculture as a C egg may be a fresh egg; correct, is it not? A. Yes, sir.

Q. Now, using a different term than the AA, A, B and C, it is likewise true that a standard referred to by the Department of Agriculture as U. S. Special, U. S. Extra, U. S. Standard and U. S. Trade may be fresh eggs? A. That is right.

Q. And that likewise it is true, is it not, Doctor, that eggs referred to as Procurement I and II may be fresh eggs? A. Yes. [210]

Q. Now, it is likewise true, is it not, that an egg which is six months old may be at the end of six months a AA egg, isn't that correct?

A. No.

Q. It is likewise true that an egg six months old may be either a AA, an A, a B or a C at the end of six months; that is correct, is it not?

A. No, it is not.

Q. Well, if it could be a AA it could be an A, couldn't it?

A. Maybe you misunderstood my answer with respect to AA. I said no.

Q. You answered no?

A. I answered no, under AA.

Q. Is it your testimony, Doctor, that an egg put in cold storage will not meet the standard of a AA egg as written in the standards set out by the Department of Agriculture; is that your testimony?

(Testimony of Dr. Robert B. Mericle.)

A. That they will not be AA after six months?

Q. Yes.

A. Generally speaking, that is the case.

Q. Pardon me?

A. Generally speaking, that is the case.

Q. But on other occasions it will, will it not?

A. It might be in very limited cases, but that is all.

Q. But at the end of six months will an A egg, properly stored, meet the standards defined by the Department of Agriculture for an A egg?

A. Yes.

Q. A B? A. Yes.

Q. A C? A. Yes.

Q. If I use the expression U. S. Extra, U. S. Standard, U. S. Trade, they would meet those standards, is that right? A. Yes. [211]

Q. Generally, your testimony is they would not meet the standards of U. S. Special?

A. That is right.

Q. Which is the equivalent of a AA egg, isn't it? A. Yes, sir.

Q. Do you recall when you first ~~went~~ on the witness stand that you indicated that Exhibit No. 21 was a standard which existed in the Department of Agriculture in respect to Grade AA, Grade A, Grade B, and Grade C eggs? Do you recall that?

A. Yes.

Q. Now, prior to the procedure of calling eggs AA's, A, B, and C prior to the acceptation of those terms in the Department of Agriculture,

(Testimony of Dr. Robert B. Mericle.)

those eggs were referred as U. S. Special, U. S. Extra, U. S. Standard, and U. S. Trade, isn't that correct? A. Yes, sir.

Q. Do you know of any difference in the definition and the standard as written by the Department of Agriculture when they described a U. S. Special and when they described a AA egg?

A. The difference in the wording in the individual egg specifications.

Q. The difference in wording of the standard; is there any difference in the standard for a U. S. Special and the Grade AA?

A. There is a slight difference in the wording, of the phraseology that is used, yes.

Q. But after you have read them both do they mean the same thing?

A. The interpretation is about the same, yes.

Q. So that during a certain period the Department of Agriculture, [212] for its convenience, referred to U. S. Special, U. S. Extra, U. S. Standard, U. S. Trade, and later they referred to the same standards as AA, A, B, and C, isn't that right?

A. That is right with the minor changes in phraseology.

Q. You have been in the department how long?

A. 15 years.

Q. How many? A. 15 years.

Q. Well, in that 15-year period, devoting a large portion of that time to eggs, are you conscious now of any difference between the standards, the highest, the next highest, the third highest, and the fourth highest, regardless of the name?

(Testimony of Dr. Robert B. Mericle.)

A. Not material difference as far as interpretation of standards is concerned.

Q. Do you know any difference? Do you know any difference, whether it is material or immaterial, other than the phraseology? A. No.

Q. Doctor, one of the factors in grading an egg—you have it there—you have the exhibit that is numbered 22—do you recall that? That is the one of which a counterpart was given to all the jurors, do you recall that? A. Yes.

Q. Do you recall, Doctor, when that was sent out to the trade, if ever?

A. Approximately, I would say, in 1942.

Q. That is your——

A. Or in the early part of 1943.

Q. Have you a definite recollection in that respect, or are you assuming that to be so?

A. It was sent out to the trade when it was published; shortly after it was published it was received. [213]

Q. Do you know that to be so?

A. As I recall, that was approximately the time it was given out.

Q. Do you know when it was published?

A. The exact date?

Q. Yes. A. No.

Q. You know in all events it was published some time after Exhibit 33? A. Yes.

Q. Now, Doctor, one of the factors in grading an egg is the yolk, is it not? A. Yes.

Q. I will ask you, Doctor, if you will look at Ex-

(Testimony of Dr. Robert B. Mericle.)

hibit No. 33. You have a counterpart of Exhibit No. 22. I wish to show you Exhibit 33 and ask you if it is not true that the yolk as delineated in No. 33 is not as dark, if not darker, than the yolk delineated for grade A eggs, which are lower grade eggs than an AA?

A. Let the photograph speak for itself.

Q. I will ask you to look at it as a man who has used those charts in grading eggs, and ask you if it is not apparent to you that in chart 33, for U. S. Special egg, that the yolk appears darker than it does in Exhibit 22 for an A egg? Will you look at it and tell me whether or not, in your opinion, that is or is not so?

A. Cannot that speak for itself, the photograph?

Mr. Faulkner: Your Honor, may I have a direction from the court to the witness to answer the question?

The Court: You may answer. Read the question. [14]

(Question read.)

A. It appears that way from the photograph.

Q. I will ask you if it is not apparent to you as a grader of eggs that the red spots from the yolk in U. S Trade eggs is not much deeper and darker than for a Grade C, U. S. Grade and Grade C? When you look at them in this photograph, is there any question in your mind that U. S. Trade C is much lighter than U. S.—No—U. S. Grade C is much lighter than U. S. Trade eggs; that is right, isn't it? A. It appears that way.

(Testimony of Dr. Robert B. Mericle.)

Q. As a matter of fact, is there any question in your mind that U. S. Grade C is lighter in color than U. S. Standard? A. It appears that way.

Q. Now, then, the yolk is an important feature in the grading of eggs, is it not? A. Yes.

Q. Now, Doctor, the standard is identical, isn't it, for both U. S. Trade and C, the U. S. Standard and B, U. S. Extra and A, and U. S. Special and AA?

A. I made qualifications on my previous answer on that.

Q. You said there was no material difference, isn't that right?

A. Yes, but there is different wording in the phraseology, in the way it is worded.

Q. Now, then, if a man had learned his egg inspection business and had learned the standards defining U. S. Special, U. S. Extra, U. S. Standard and U. S. Trade, and he was [215] candling and inspecting a quantity of eggs, and he visualized in his eye that these met those standards, he would get a different result at the end of his work than if he was candling under Exhibit 22, isn't that correct?

A. He would from that, apparently.

Mr. Faulkner: That is all.

The Court: Step down.

Mr. Faulkner: I would like the jury, your Honor, to see this exhibit, which has never been handed to them, with Exhibit 22; and this is a

counterpart, if I may hand them to the jury together.

Mr. Pratt: Colonel Hand.

Mr. Hippeli: May we wait until they are finished with the exhibit?

The Court: The witness may come in.

LIEUT.-COL. PEARL HUGH HAND,

called as a witness on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Pearl H. Hand.

Direct Examination

Mr. Houck: Q. Col. Hand, What department of the Army are you with?

A. I am the Depot Veterinarian, Kansas City Quartermaster Depot.

Q. Is that within the Veterinary Corps of the Army? [216]

A. That is the Veterinary Corps of the Medical Department of the Army.

Q. At Kansas City you are the——

A. Depot Veterinarian in charge of all meat, meat food inspection.

Q. Did you complete your answer?

A. I have charge of all the inspection of meat, meat food, butter, eggs, cheese, poultry, fish, milk, in the metropolitan Kansas City area, that is purchased for the armed forces.